

RECEIVED
FEDERAL ELECTION
COMMISSION

2016 DEC 21 PM 2:51

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 7081 CELA
DATE COMPLAINT FILED: June 7, 2016
DATE OF NOTIFICATIONS:
June 14, 2016; September 27, 2016¹
DATE OF LAST RESPONSE: August 4, 2016
DATE ACTIVATED: September 22, 2016

EXPIRATION OF SOL: September 2, 2020
ELECTION CYCLE: 2016

COMPLAINANT:

Howard Klein

RESPONDENTS:

Floridians for a Strong Middle Class and
Jennifer May in her official capacity as treasurer
Nicholas A. Mastroianni II
230 East 63rd -6 Trust, LLC
Pride United Limited Partnership
Chic Boutique, LLC
Mark Giresi
Rep. Patrick Murphy

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30121
52 U.S.C. § 30122
11 C.F.R. § 110.4(b)
11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant in this matter alleges that Nicholas Mastroianni, a real estate developer whose projects have been financed by foreign nationals through the EB-5 federal visa program,

¹ Due to an administrative oversight, 230 East 63rd -6 Trust, LLC was provided late notice of the Complaint and an opportunity to respond on September 27, 2016. 230 East 63rd -6 Trust, LLC did not respond.

170444430781

1 arranged for foreign nationals to contribute \$50,000 through a conduit limited liability company
2 ("LLC"), 230 East 63rd -6 Trust, LLC, to Floridians for a Strong Middle Class ("FSMC"), an
3 independent-expenditure-only political committee supporting Rep. Patrick Murphy's campaign
4 for the U.S. Senate in Florida. The Complaint further alleges that FSMC knowingly accepted
5 these prohibited contributions. In addition, the Complaint alleges that Chic Boutique, LLC,
6 which is also linked to Mastroianni, contributed \$5,000 in the name of another to FSMC, and
7 that Pride United, a dissolved Florida limited partnership, made a \$20,000 contribution in the
8 name of another to FSMC. The Complaint contends that these contributions to FSMC were
9 made in exchange for Murphy's support of the EB-5 visa program. Respondents deny the
10 allegations. Because the available record does not support a reasonable inference that the
11 contributions at issue were foreign national contributions or contributions in the name of another,
12 we recommend that the Commission find no reason to believe that Respondents violated the law
13 as alleged.

14 II. FACTUAL BACKGROUND

15 A. Complaint

16 The allegations raised in the Complaint center on a Florida real estate developer,
17 Nicholas Mastroianni, and his use of the EB-5 federal visa program.² Beginning in 2010,
18 Mastroianni used the EB-5 program to obtain financing from Chinese nationals for his

² Under the program, foreign nationals can qualify for an EB-5 visa, which grants conditional permanent resident status for a two-year period, by investing at least \$1 million (or, in certain high-unemployment or rural areas, at least \$500,000) in a U.S. commercial enterprise that results in the creation of at least ten full-time jobs for qualifying U.S. workers within two years. After the two-year period, if the conditions of the visa are met, the foreign national is granted unconditional permanent resident status. See EB-5 Adjudications Policy Memorandum, U.S. Citizenship and Immigration Services (May 30, 2013), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>.

1 development projects.³ The Complaint contends that since 2010, Mastroianni has also been a
2 prominent political supporter of candidates and officeholders that support the EB-5 program,
3 including Florida Rep. Patrick Murphy.⁴

4 The Complaint alleges that Mastroianni used funds obtained from a Chinese national to
5 make contributions to FSMC, a Super PAC supporting Murphy's campaign for the U.S. Senate
6 in Florida, through a conduit LLC that was previously used to purchase and hold real estate.⁵
7 Specifically, the Complaint avers that on February 14, 2014, Mastroianni registered an entity in
8 Florida, 230 East 63rd -6 Trust, LLC, listing himself as that entity's manager. That LLC then
9 purchased a penthouse apartment in New York on October 30, 2014, for approximately \$3.75
10 million. Based on two news articles, the Complaint infers that Mastroianni bought the apartment
11 through the LLC for a Chinese national involved with the EB-5 program, with funds provided by
12 that person.⁶ Mastroianni then dissolved the LLC on April 22, 2015.

³ Compl. at 2 (June 4, 2016) (citing Peter Elkind and Marty Jones, *The Tangled Past of the Hottest Money-Raiser in America's Visa-For-Sale Program*, *FORTUNE* (Oct. 14, 2014) ("Mastroianni's website boasts of involvement with \$5.5 billion in development projects over the years, funded with \$1.4 billion in EB-5 money, resulting in "40,000 jobs created." Those are massive sums given that the entire EB-5 system raised a total of about \$1.8 billion last year.")).

⁴ Between 2013 and 2014, Murphy allegedly met with delegates from the Chinese Immigration Agency, and a Chinese immigration attorney based in New York, to discuss ways to improve the EB-5 program, and in September 2014, he cosponsored a bill to make EB-5 — a pilot program that must be periodically reauthorized — permanent. *Id.* at 2-3. The initiative to make the EB-5 visa program permanent did not succeed. *See* Ron Nixon, *Visa Program Up for Renewal Amid Allegations of Fraud*, *N.Y. TIMES* (Sept. 11, 2016) ("A contentious visa program that allows wealthy foreigners to obtain a green card by investing in economic development projects will expire at the end of this month unless Congress acts to extend it. . . . About 10,000 visas are awarded annually, primarily to wealthy Chinese citizens, who make up about 80 percent of the investors[.]")

⁵ Compl. at 3.

⁶ *Id.* at 4. Relying on news articles published in mid-2014, the Complaint states that "it was well-known that crooked business people and corrupt politicians from all over the world" were buying real estate in the U.S. to launder money, and that "Chinese foreign nationals made up the majority of the foreign investors using this method" to purchase high-end property in Manhattan. *Id.* at 3-4 (citing Hudson, Stanescu, and Adler-Bell, *How New York Real Estate Became a Dumping Ground for the World's Dirty Money*, *THE NATION* (July 3, 2014) ("New York is a magnet for the super-rich homebuyers from other lands bearing money of sometimes dubious provenance."); Mike Segar, *In Real Estate, the Chinese Take Manhattan*, *REUTERS* (Apr. 25, 2014)).

1 According to the Complaint, Mastroianni made two contributions to FSMC totaling
2 \$50,000 on September 2, 2015, in the name of the dissolved entity, 230 East 63rd -6 Trust, LLC.⁷
3 Complainant alleges that because the LLC engaged in no known business other than purchasing
4 the apartment on behalf of a Chinese national, the contributions to FSMC in the name of the LLC
5 actually came from a Chinese national or from Mastroianni himself, such that they were foreign
6 national contributions or contributions in the name of another (or both).⁸

7 The Complaint further avers that FSMC knowingly accepted these illegal contributions
8 because the committee "should have known the \$50,000 in contributions from 230 East 63rd -6
9 Trust, LLC were suspicious[,]” based largely on the fact that it was “already well known in
10 Florida at the time” that Mastroianni had been sued for fraudulent use of foreign investment
11 capital raised under the EB-5 program.⁹

12 The Complaint also refers to two other instances when FSMC allegedly accepted
13 contributions in the name of another. First, Chic Boutique, LLC, an entity used to operate a
14 clothing store located in a Mastroianni development and managed by Mark Giresi, the general
15 counsel for one of Mastroianni’s development companies, gave \$5,000 to FSMC in September
16 2015. Second, Pride United, a Florida limited partnership that was apparently dissolved in
17 September 2015, purportedly contributed \$20,000 to FSMC in December 2015.¹⁰

⁷ See FSMC 2015 Year-End Report at 6 (Jan. 31, 2016); Compl. at 4. 230 East 63rd -6 Trust, LLC has not made any other contributions. The Complaint incorrectly states that the contributions were both made on Sept. 2, 2015; the contributions were actually made on Sept. 2, 2015 and December 14, 2015.

⁸ Compl. at 4.

⁹ *Id.*

¹⁰ *Id.* at 4-5.

17044430784

1 **B. Responses**

2 Nicholas A. Mastroianni II, Mark Giresi, and Chic Boutique, LLC filed a joint Response
3 contending that "230 East 63rd -6 Trust, LLC," the entity that contributed to FSMC, is an active
4 Delaware LLC, while a Florida LLC with the same name and registration date, February 14,
5 2014, was dissolved in April 2015.¹¹ The Response clarifies that the Delaware LLC purchased
6 the \$3.75 million Manhattan apartment on October 30, 2014,¹² and later made contributions
7 totaling \$50,000 to FSMC on September 2, 2015, and December 14, 2015.¹³ The Florida LLC
8 did not make contributions to FSMC.¹⁴ In addition, the Response contends that the Complaint
9 provides no basis for the allegation that the contribution from Chic Boutique was a contribution
10 in the name of another.¹⁵

11 Pride United Limited Partnership ("Pride") filed a Response explaining that it is a limited
12 partnership that was established in December 1996 by the named partners of a Florida law firm,
13 to hold title to the office building where the firm is located, and that the entity principally earns
14 income from the rent paid by the law firm for leasing that office building.¹⁶ Pride denies being a
15 shell company or conduit entity, and denies receiving any outside funds provided for the purpose

¹¹ Mastroianni Resp. at 1-2, Ex. 1 (July 22, 2016).

¹² See Compl. Ex. 4 at 9 ("Certification Page") indicating that 230 East 63rd -6 Trust, LLC is "a Delaware limited liability company" and signed by Mastroianni; the LLC's address is listed as "1295 U.S. Highway 1, North Palm Beach, Florida 33408." This is the same address listed for Mastroianni as "Manager" of the Florida LLC.

¹³ See Mastroianni Resp. at 2; FSMC 2015 Year-End Report at 6 (Jan. 31, 2016).

¹⁴ The Mastroianni Response also attaches a letter dated March 17, 2016, from Mastroianni, by counsel, to a Florida news outlet, the "Florida Bulldog," which apparently published a story raising many of the same allegations raised in the Complaint. In that letter, Mastroianni clarified that "the Delaware Entity made contributions in the amount of \$25,000 to [FSMC] on September 2, 2015 and December 14, 2015. . . . There was a Florida Entity that was incorporated on the same day as the Delaware Entity and was later administratively dissolved, but that Florida Entity had nothing to do with contributions to [FSMC]." Mastroianni Resp. Ex. C at 2.

¹⁵ Mastroianni Resp. at 3.

¹⁶ Pride Resp. at 1 (July 25, 2016).

17074440805

1 of making political contributions. It asserts that any contributions that Pride made came from the
2 revenue it earned "in the ordinary course of its long-standing business activities."¹⁷ Pride also
3 contends that although it was administratively dissolved in September 2015, as alleged in the
4 Complaint, that dissolution occurred "because of a failure to [timely] file an annual report" and,
5 when that report was filed, Pride was retroactively reinstated as permitted under Florida law.¹⁸

6 Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer
7 ("FSMC") filed a Response contending that the allegations are speculative and unfounded. They
8 argue that the Complaint presents no evidence to support its claim that FSMC knowingly
9 accepted foreign-national contributions or contributions in the name of another.¹⁹ They note also
10 that LLCs are legally permitted to contribute to independent-expenditure-only committees like
11 FSMC, and that FSMC had no reason to suspect that any of the contributions at issue were
12 improper.²⁰ The Response notes that the vast majority of LLCs used to buy or hold real estate or
13 other assets are not part of a scheme to hide or launder foreign money, and that contributions
14 from such entities "are not inherently questionable[.]"²¹

15 Rep. Patrick Murphy filed a Response clarifying that the allegations raised in the
16 Complaint pertain solely to contributions received by FSMC, not by his campaign, and, as such,
17 the Complaint raises no claims against Murphy or his campaign. Murphy also rejects the "naked

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ FSMC Resp. at 1-2 (Aug. 1, 2016).

²⁰ *Id.* at 2.

²¹ *Id.* at 3.

11/10/2016 10:44:40 AM

1 speculation” that he received campaign contributions in exchange for taking any official action,
2 such as supporting the EB-5 visa program or particular program applicants.²²

3 III. FACTUAL AND LEGAL ANALYSIS

4 A. Foreign National Contributions

5 1. Legal Standard

6 The Federal Election Campaign Act of 1971, as amended (“Act”), prohibits any “foreign
7 national” from “directly or indirectly” making a contribution or donation of money or any other
8 thing of value in connection with a Federal, State, or local election.²³ “Foreign national”
9 includes anyone who “is not a citizen of the United States or a national of the United
10 States . . . and who is not lawfully admitted for permanent residence[.]”²⁴

11 It is also unlawful for any person to “*knowingly* solicit, accept or receive” a contribution
12 or donation made by a foreign national.²⁵ The Commission has clarified that in order to
13 “knowingly” solicit, accept, or receive a foreign national contribution, a person must (1) have
14 actual knowledge that the source of the funds is a foreign national; (2) have reason to know that
15 the source of the funds is a foreign national, *i.e.*, be aware of facts that would lead a reasonable
16 person to conclude that there is a substantial probability that the source is a foreign national; or
17 (3) engage in “willful blindness,” *i.e.*, be aware of facts that would lead a reasonable person to

²² Murphy Resp. at 1 (Aug. 4, 2016).

²³ 52 U.S.C. § 30121(a)(1); *see* 11 C.F.R. § 110.20(b)-(c). Courts have consistently upheld the provisions of the Act prohibiting foreign-national contributions, on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over activities and processes integral to democratic self-government, which include making political contributions or express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

²⁴ 52 U.S.C. § 30121(b); *see* 11 C.F.R. § 110.20(a)(3).

²⁵ 11 C.F.R. § 110.20(g) (emphasis added); *see* 52 U.S.C. § 30121(a)(2).

1 inquire further into the provenance of the funds, but fail to conduct a reasonable inquiry.²⁶ In
2 addition, the law prohibits anyone from knowingly providing “substantial assistance in the
3 solicitation, making, acceptance, or receipt of a contribution or donation” by a foreign national.²⁷

4 2. The Record Does Not Support the Inference that the Contributions by 230
5 East 63rd -6 Trust, LLC to FSMC were Foreign National Contributions
6 under 52 U.S.C. § 30121

7 The available record does not support the inference that the contributions made by 230
8 East 63rd -6 Trust, LLC to FSMC were foreign national contributions. The record provides no
9 information to support the inference that Mastroianni organized or funded 230 East 63rd -6 Trust,
10 LLC on behalf of, or with money obtained from, foreign nationals. While Mastroianni may have
11 used the EB-5 program to obtain financing for his real estate projects from Chinese nationals,
12 there are no facts that connect his real estate development work to the creation or funding of 230
13 East 63rd -6 Trust, LLC, its purchase of a Manhattan apartment, or its contributions to FSMC.
14 Without specific factual support, the mere fact that Mastroianni frequently worked with Chinese
15 nationals does not support the assertion that he used foreign money to fund an LLC and make
16 political contributions in its name.

17 Although the Complaint relies on news articles generally claiming that Chinese nationals
18 have been actively purchasing high-end real property in New York since 2014, these articles do
19 not refer to Mastroianni, 230 East 63rd -6 Trust, LLC, or the property at issue. There are no facts
20 to support the conclusion that this particular LLC was used to purchase this apartment on behalf

²⁶ 11 C.F.R. § 110.20(a)(4). See Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69941 (Nov. 19, 2002) (“The final rules at 11 CFR 110.20(a)(4) . . . contain three standards of knowledge, any one of which would satisfy the knowledge requirements: (1) Actual knowledge; (2) reason to know; and (3) the equivalent of willful blindness.”).

²⁷ 11 C.F.R. § 110.20(h)(1); see 52 U.S.C. § 30121.

1 of, or with funds provided by, a foreign national, or that the funds contributed to FSMC were
2 provided by a foreign national or were otherwise derived from a foreign source.

3 Correspondingly, the record provides no support for the conclusion that FSMC
4 knowingly accepted or received foreign national contributions. The funds at issue came from a
5 domestic entity formed under Delaware law, with an address in Florida. As FSMC asserts, "the
6 overwhelming majority of real estate LLCs are neither schemes to hide illegal contributions nor
7 are they foreign-owned entities[;]" furthermore, an LLC contributing funds to a committee is not
8 "inherently questionable[;]" and FSMC had no clear reason to question these contributions.²⁸

9 Accordingly, we recommend that the Commission find no reason to believe that 230 East
10 63rd -6 Trust, LLC, Mastroianni, or FSMC violated 52 U.S.C. § 30121 or 11 C.F.R. § 110.20.

11 **B. Contributions in the Name of Another**

12 1. Legal Standard

13 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
14 deposit of money or anything of value made by any person for the purpose of influencing any
15 election for Federal office."²⁹ The term "person" for purposes of the Act and Commission
16 regulations includes partnerships, corporations, and "any other organization or group of
17 persons."³⁰ The law prohibits a person from making a contribution in the name of another

²⁸ FSMC Resp. at 3.

²⁹ 52 U.S.C. § 30101(8)(A).

³⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to "contributions by a person made on behalf of or to a candidate." *Id.* By their terms, neither the earmarking provision of the Act nor the Commission's implementing regulation reaches contributions made to independent-

1 person, knowingly permitting his or her name to be used to effect such a contribution, or
2 knowingly accepting such a contribution.³¹ The Commission has included in its regulations
3 illustrations of activities that constitute making a contribution in the name of another:

- 4 (i) Giving money or anything of value, all or part of which was provided to the
5 contributor by another person (the true contributor) without disclosing the
6 source of money or the thing of value to the recipient candidate or committee
7 at the time the contribution is made; or
- 8 (ii) Making a contribution of money or anything of value and attributing as the
9 source of the money or thing of value another person when in fact the
10 contributor is the source.³²

11 The requirement that a contribution be made in the name of its true source promotes
12 Congress's objective of ensuring the complete and accurate disclosure by candidates and
13 committees of the political contributions they receive.³³ Courts therefore have uniformly
14 rejected the assertion that "only the person who actually transmits funds . . . makes the
15 contribution,"³⁴ recognizing that "it is implausible that Congress, in seeking to promote
16 transparency, would have understood the relevant contributor to be [an] intermediary who
17 merely transmitted the campaign gift."³⁵ Consequently, both the Act and the Commission's

expenditure-only political committees, as implicated in this matter.

³¹ 52 U.S.C. § 30122.

³² 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³³ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁵ *O'Donnell*, 608 F.3d at 554; see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

1 implementing regulations provide that a person who furnishes another with funds for the purpose
2 of contributing to a candidate or committee “makes” the resulting contribution.³⁶ This is true
3 whether funds are advanced to another person to make a contribution in that person’s name or
4 promised as reimbursement of a solicited contribution.³⁷ Because the concern of the law is the
5 true source from which a contribution to a candidate or committee originates, we look to the
6 structure of the transaction itself and the arrangement between the parties to determine who in
7 fact “made” a given contribution.³⁸

8 2. The Record Does Not Support the Inference that Mastroianni Made, 230
9 East 63rd -6 Trust, LLC Knowingly Facilitated, or FSMC Knowingly
10 Accepted Contributions in the Name of Another under 52 U.S.C. § 30122.

11 The available record does not support the allegation that the contributions made by 230
12 East 63rd -6 Trust, LLC were contributions in the name of another under the Act. First, the
13 allegation that the entity that made the contributions had previously been dissolved appears to be
14 unfounded. The record indicates that two entities — both named “230 East 63rd -6 Trust, LLC”
15 — were organized on the same day, February 14, 2014; one was organized in Florida, while the
16 other was organized in Delaware. The Delaware entity appears to have purchased property in

³⁶ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³⁷ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁸ As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee, like the contribution at issue in this matter.

1 New York, and according to Delaware records, is still active. The Mastroianni Response asserts
2 that this Delaware LLC made \$50,000 in contributions to FSMC, and the available facts do not
3 contradict that claim. Florida records show that the Florida LLC, by contrast, was dissolved in
4 April 2015, and the document filed with the state effecting that dissolution suggests that the LLC
5 was dissolved because it had been mistakenly established in that state. The available facts
6 therefore provide that the FSMC contributions were not falsely attributed to a dissolved entity.

7 In addition, the record contains no specific facts to support the inference that the funds
8 contributed to FSMC were provided to the LLC for the purpose of making a contribution. The
9 record does not definitively establish where the funds contributed to FSMC came from, *i.e.*, who
10 was the true contributor. However, the circumstantial facts in the record, viewed as a whole,
11 suggest that the LLC was organized and used for a commercial purpose, and that it likely would
12 have had the financial means to make \$50,000 in contributions without an infusion of outside
13 funds provided to it for that specific purpose. The LLC was established on February 14, 2014, or
14 over 18 months before the first contribution to FSMC on September 2, 2015. During that period,
15 the LLC purchased a Manhattan apartment for \$3.75 million. As such, the available record
16 suggests that the LLC may have made a contribution in its own name and was not organized and
17 used as a conduit, and FSMC did not knowingly accept a contribution in the name of another.

18 As such, we recommend that the Commission find no reason to believe that Nicholas
19 Mastroianni, 230 East 63rd -6 Trust, LLC, or FSMC violated 52 U.S.C. § 30122 as alleged.

20 3. The Available Record Does Not Support the Inference that Chic Boutique,
21 LLC was Not the True Contributor to FSMC under 52 U.S.C. § 30122.

22 The record does not support the allegation that Mastroianni, Chic Boutique, LLC, or
23 Mark Giresi made or knowingly facilitated a contribution in the name of another. The available

1 facts indicate that Chic Boutique was organized in Delaware on September 14, 2015.³⁹ The LLC
2 is managed by Mark and Lisa Giresi, and is apparently used to operate a retail clothing store
3 located at Harbourside Place, one of Mastroianni's Florida development projects.⁴⁰ Mark Giresi
4 also serves as General Counsel for the U.S. Immigration Fund, the EB-5 Regional Center
5 founded by Mastroianni.⁴¹ In addition, Patricia Harris, a paralegal at U.S. Immigration Fund and
6 another Mastroianni-run company, Allied Capital and Development of South Florida, LLC, is
7 listed as a point of contact on Chic Boutique's application to conduct business in Florida as a
8 "foreign" LLC, *i.e.*, an LLC organized outside of Florida.⁴² Chic Boutique was reported as
9 having made a \$5,000 contribution to FSMC on November 18, 2015.⁴³

10 Although the available record suggests that Mastroianni, Giresi, and Chic Boutique are
11 linked, it does not raise a reasoned inference that Chic Boutique was not the true contributor,
12 *i.e.*, that Mastroianni, Giresi, or another person provided or reimbursed funds to the LLC for it to
13 make a contribution. While the available record does not definitively establish how Chic
14 Boutique acquired the funds that it contributed to FSMC, circumstantial facts suggest that the
15 LLC likely made a contribution in its own name, as permitted under the law. Chic Boutique was
16 an active business entity, which could plausibly have made a \$5,000 contribution to FSMC in its

³⁹ CHIC BOUTIQUE, LLC, Delaware Entity Search Result, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (viewed Sept. 27, 2016).

⁴⁰ The LLC is referred to as Chic Boutique, LLC or under an alternative name, Chic Boutique Fashion, LLC. Both names are listed on its application to conduct business in Florida. *See* Compl. Ex. 12 at 4; *see also* Chic Boutique Fashion, <https://www.chicboutique.fashion> (viewed Sept. 27, 2016).

⁴¹ *See* U.S. Immigration Fund, <http://visaeb-5.com/meet-the-team> (viewed Sept. 27, 2016).

⁴² *See* Compl. Ex. 12 at 2, 4; *see also* Allied Capital and Development of South Florida, <http://alliedcapitalanddevelopment.com/about-us/team> (viewed Sept. 27, 2016).

⁴³ *See* Compl. at Ex. 11; FSMC 2015 Year-End Report at 8. Chic Boutique has not made any other contributions.

1 own name with funds that it earned through its retail business operations during the nine weeks
2 between its formation and the date of the contribution.⁴⁴ As such, there is also no basis in the
3 record to infer that FSMC knowingly accepted a contribution in the name of another from Chic
4 Boutique. Accordingly, we recommend that the Commission find no reason to believe that
5 Mastroianni, Giresi, Chic Boutique, LLC, or FSMC violated 52 U.S.C. § 30122 as alleged.

6 4. The Available Record Does Not Support the Inference that Pride United
7 was Not the True Contributor to FSMC under 52 U.S.C. § 30122

8 The record does not support the allegation that Pride United made a contribution in the
9 name of another. The Complaint essentially alleges that because Pride was dissolved before it
10 gave \$20,000 to FSMC, Pride was not the true contributor but was instead being used as a false
11 name for the contribution. Pride concedes that it was administratively dissolved on September
12 25, 2015, for failing to file a mandatory annual report, but argues that it remained active and was
13 retroactively reinstated after filing the missing report.⁴⁵

14 Although Pride had been dissolved and had not yet been reinstated at the time that it
15 made a contribution to FSMC on December 29, 2015, that fact by itself does not establish that
16 Pride was not the true contributor.⁴⁶ The available facts suggest that the Pride is an active
17 business entity that was dissolved based on a technical failure to comply with Florida law. It was
18 also apparently reinstated, with retroactive effect, as permitted under Florida law. Nothing in the

⁴⁴ Chic Boutique first transacted business in Florida on Oct. 10, 2015, or approximately five weeks prior to the FSMC contribution. *See* Compl. Ex. 12 at 4.

⁴⁵ Pride was reinstated on May 4, 2016, and such reinstatements apply retroactively under Florida law. FLORIDA LIMITED PARTNERSHIP REINSTATEMENT - PRIDE UNITED LIMITED PARTNERSHIP (May 4, 2016). *See* Fla. Stat. § 620.1810 ("The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited partnership may resume its activities as if the administrative dissolution had never occurred.").

⁴⁶ *See* FSMC 2015 Year-End Report at 13. Pride made one other contribution in this election cycle, giving \$2,700 to Ted Deutch for Congress Committee on September 30, 2015.

1 record suggests that another person provided funds to Pride for it to make a contribution. Pride
2 specifically maintains that “[t]he source of Pride contributions always is, and in this case was,
3 revenue received by Pride in the ordinary course of its long-standing business activities. It is not
4 and has never been a shell company or straw entity.”⁴⁷ The record also provides no support for
5 the inference that FSMC knowingly accepted a contribution in the name of another from Pride.

6 In light of Pride’s specific denial, and the lack of any evidence supporting the allegations,
7 we recommend that the Commission find no reason to believe that Pride or FSMC violated
8 52 U.S.C. § 30122 as alleged.

9 5. There is No Factual Basis for the Allegations against Rep. Patrick Murphy.

10 There is no factual support for any allegations raised against Rep. Patrick Murphy. The
11 record does not support the conclusion that Murphy sponsored legislation, or took any other
12 “official action” in support of the EB-5 visa program, in exchange for contributions to his U.S.
13 Senate campaign committee or to FSMC. The facts indicate that Murphy may have discussed
14 ways to improve the EB-5 program, including by making it permanent, and supported legislation
15 to that effect. But nothing in the record suggests that he undertook these actions in exchange for
16 political contributions or any other benefits. The record also does not suggest that Murphy
17 communicated or coordinated with FSMC, and all of the contributions at issue were made to
18 FSMC, not Murphy’s campaign. Accordingly, we recommend that the Commission find no
19 reason to believe that Murphy violated the Act or Commission regulations.

⁴⁷ Pride Resp. at 2.

1 **IV. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Nicholas A. Mastroianni II, 230 East 63rd -6 Trust,
3 LLC, and Floridians for a Strong Middle Class and Jennifer May in her official
4 capacity as treasurer violated 52 U.S.C. § 30121 or 11 C.F.R. § 110.20 as alleged;
- 5 2. Find no reason to believe that Nicholas A. Mastroianni II, 230 East 63rd -6 Trust,
6 LLC, and Floridians for a Strong Middle Class and Jennifer May in her official
7 capacity as treasurer violated 52 U.S.C. § 30122 as alleged;
- 8 3. Find no reason to believe that Chic Boutique, LLC and Mark Giresi violated
9 52 U.S.C. § 30122 as alleged;
- 10 4. Find no reason to believe that Pride United Limited Partnership violated 52 U.S.C.
11 § 30122 as alleged;
- 12 5. Find no reason to believe that Rep. Patrick Murphy violated the Act or Commission
13 regulations in connection with the allegations in this matter;
- 14 6. Approve the attached Factual and Legal Analysis;
- 15 7. Approve the appropriate letters; and
- 16 8. Close the file.

17 Lisa Stevenson
18 Acting General Counsel

19 Date: 12/21/16

20 Kathleen Guith
21 Kathleen Guith
Acting Associate General Counsel for Enforcement

22 Mark Shonkwiler
23 Mark Shonkwiler
24 Assistant General Counsel

25 Saurav Ghosh
26 Saurav Ghosh
27 Attorney